

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MONRELL DONOVAN MURPHY,

Plaintiff,

v.

FLORES,

Defendant.

Case No. 1:23-cv-00740-KES-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANT'S MOTION TO REVOKE
PLAINTIFF'S IN FORMA PAUPERIS
STATUS

(Docs. 20, 23)

Plaintiff Monrell Donovan Murphy is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on May 12, 2023. Doc. 1. Plaintiff's motion to proceed in forma pauperis was granted the same date. Docs. 2, 5. This action proceeds against defendant Flores for excessive force in violation of the Eighth Amendment and for retaliation in violation of the First Amendment. Docs. 12, 15. On February 14, 2024, defendant filed a motion under 28 U.S.C. § 1915(e)(2)(A) to revoke Plaintiff's IFP status. Doc. 20. Plaintiff filed an opposition on February 26, 2024, Doc. 21, and defendant filed a reply on March 1, 2024, Doc. 22.

On March 6, 2024, the assigned magistrate judge issued findings and recommendations recommending that plaintiff's in forma pauperis status be revoked in accordance with 28 U.S.C. § 1915(g), after determining that plaintiff had accumulated three strikes. The magistrate judge additionally found that plaintiff should be required to pay the remainder of his filing fee in full to

1 proceed with this action. Docs. 23, 23-1. The findings and recommendations were served on the
2 parties and contained notice that any objections thereto were to be filed within fourteen (14) days
3 following service. *Id.* On March 22, 2024, plaintiff filed objections to the findings and
4 recommendations. Doc. 27. Defendant filed a reply to plaintiff's objections on April 3, 2024.
5 Doc. 28.

6 Plaintiff objects that the dismissal of his prior case *Murphy v. Diaz*, Case No. 2:19-cv-
7 05034 (C.D. Cal.) ("*Diaz 2*") should not count as a strike because he claims it was "not decided
8 on the ground that the complaint was friv[olous], malicious, or failed to state a claim." Doc. 27.
9 However, as the findings and recommendations noted, *Diaz 2* was dismissed based on claim
10 preclusion (res judicata) because plaintiff's claims in that case were barred by his settlement
11 agreement in an earlier case. And "[c]ourts in this circuit routinely hold that a claim that is barred
12 by res judicata is frivolous." *Zone Sports Center Inc. LLC v. Red Head, Inc.*, 2013 WL 2252016,
13 at *5 (N.D. Cal. May 22, 2013) (citing cases).

14 In accordance with 28 U.S.C. § 636 (b)(1), this court has conducted a de novo review of
15 the case. Having carefully reviewed the file, including plaintiff's objections and defendant's
16 reply, the court concludes that the magistrate judge's findings and recommendations are
17 supported by the record and proper analysis.

18 As of the date of this order, plaintiff has paid a total of \$120.20 towards the filing of this
19 case. Plaintiff therefore owes the remaining \$282.80 of the \$403.00 filing fee following the
20 revocation of his in *forma pauperis* status.¹

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. The findings and recommendations issued on March 6, 2024, Doc. 23, are ADOPTED IN
23 FULL;
- 24 2. Defendant's motion under 28 U.S.C. § 1915(e)(2)(A) to revoke plaintiff's in forma
25 pauperis status is GRANTED;

26 ¹ Effective December 1, 2023, the filing fee for civil cases in the Eastern District of California
27 was increased to \$405.00 (\$350.00 filing fee plus \$55.00 administrative fee). However, at the
28 time this action was filed, the filing fee was \$403.00 (\$350.00 filing fee plus \$53.00
administrative fee).

3. Plaintiff's in forma pauperis status is revoked; and
4. Within **thirty (30) days** following the date of service of this order, Plaintiff shall pay in full **\$282.80**, which is the remainder of the filing fee due, to proceed with this action. **If Plaintiff fails to pay this remaining amount due within the specified time, this action will be dismissed for failure to pay the filing fee.**

IT IS SO ORDERED.

Dated: January 7, 2025


UNITED STATES DISTRICT JUDGE